

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

THE UNITED STATES OF AMERICA :  
*ex rel.* DONALD GALE : CASE NO. 1:10-CV-00127  
Plaintiff, :  
v. : OPINION & ORDER  
OMNICARE, INC., : [Resolving Doc. [183](#)]  
Defendant. :  
:

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Non-party Joel Germunder, a resident of Florida, moves to quash a trial subpoena served on him by Relator David Gale. Gale seeks Germunder's trial testimony in this False Claims Act case.<sup>1/</sup> Germunder says that the subpoena does not comply with requirements of [Federal Rule of Civil Procedure 45](#) because service was improper, places an unreasonable burden on him, and some technical defects.<sup>2/</sup> The Court **DENIES** the motion to quash.

[Title 31 United States Code section 3731\(a\)](#) allows a trial subpoena to be served on a person at any place in the United States. This statute "creates a subpoena power that exceeds the court's subpoena authority under Rule 45."<sup>3/</sup> Accordingly, service on Germunder in Florida was proper.

Additionally, personal service was not required. Rule 45 nowhere provides that personal service of a subpoena is required. Instead, "[s]erving a subpoena requires delivering a copy to the

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<sup>1/</sup>Doc. [183](#).

<sup>2/</sup>*Id.*

<sup>3/</sup>[United States ex rel. Wilson v. Bristol-Myers Squibb, Inc., C.A. No. 06-12195, 2013 WL 3327317, at \\*3 \(D. Mass June 27, 2013\)](#) (finding "the weight of authority" supports this interpretation).

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named person . . .”<sup>4/</sup> The facts show that Germunder was served by certified mail that included the fees and milage costs.<sup>5/</sup> Therefore, Germunder was served appropriately.<sup>6/</sup>

The subpoena is not unduly burdensome. This Court has set the trial for this case on October 28, 2013.<sup>7/</sup> Germunder’s own filings show that he had been in communication with Gale’s counsel in September and was aware of the substance of what he would be asked.<sup>8/</sup> His testimony is also relevant to Omnicare’s per-diem pricing strategy and its due diligence in acquiring companies that had per-diem arrangements. The fact that Gale did not depose Germunder does not make his testimony unnecessary, particularly where Germunder attempted to evade sitting for a deposition.<sup>9/</sup>

The Court finds that Germunder’s other objections to the subpoena lose. Therefore, the Court **DENIES** Germunder’s motion to quash the subpoena.

IT IS SO ORDERED.

Dated: October 19, 2013

*s* \_\_\_\_\_ *James S. Gwin*  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>4/</sup>[Fed. R. Civ. P. 45\(b\)\(1\)](#).

<sup>5/</sup>[Doc. 185-6.](#)

<sup>6/</sup>*See, e.g., Powell v. Time Warner Cable, Inc., 2010 WL 5464895, at \*2-\*3 (S.D. Oh. Dec. 30, 2010)* (“[T]he drafters [of the Civil Rules] knew how to indicate a personal service requirement, but chose not to do so in Rule 45. . . The Court agrees with and adopts the analyses of those courts finding that service of a subpoena is effective so long as it reasonably insures actual receipt.”).

<sup>7/</sup>*See* Docket Notice filed Oct. 17, 2013.

<sup>8/</sup>[Doc. 183-1](#) at 9-11.

<sup>9/</sup>*Id.*